

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HOSPIRA, INC. and ORION
CORPORATION,

Plaintiffs/Counterclaim
Defendants,

v.

SANDOZ INTERNATIONAL GmbH,
SANDOZ INC., and SANDOZ CANADA INC.

Defendants/Counterclaim
Plaintiffs.

CIVIL ACTION NO. 3:09-cv-04591
(MLC-TJB)

R E C E I V E D

DEC - 5 2011

AT 8:30 WILLIAM T. WALSH M
CLERK

STIPULATION

WHEREAS, Plaintiffs Hospira, Inc. and Orion Corporation (collectively "Plaintiffs") initiated an action for patent infringement (the "Action") under 35 U.S.C. §§ 271(a), (b), (c) and (e)(2) against Defendants Sandoz Inc., Sandoz International GmbH ("Sandoz International"), and Sandoz Canada Inc. ("Sandoz Canada") (collectively "Defendants");

WHEREAS, Plaintiffs allege that Sandoz Inc. and Sandoz Canada have infringed U.S. Patent Nos. 4,910,214 ("214 Patent") and 6,716,867 ("867 Patent"; collectively with the '214 Patent, the "Patents-In-Suit") under 35 U.S.C. § 271(e)(2) by filing Abbreviated New Drug Application No. 91-465 ("ANDA 91-465") with the FDA, and that the Defendants would infringe the Patents-In-Suit under 35 U.S.C. § 271(a), (b) and/or (c) by the commercial manufacture, use, sale, or offer for sale within the United States and/or importation into the United States of the dexmedetomidine product that is the subject of ANDA 91-465 ("the ANDA 91-465 Product");

WHEREAS, on April 22, 2011, Plaintiffs served a motion for summary judgment, *inter alia*, that Sandoz International infringes the patents-in-suit, and Sandoz International served a motion for summary judgment that Sandoz International does not infringe the patents-in-suit, with both motions fully briefed and submitted; and

WHEREAS, on May 17, 2011, Sandoz Inc. and Sandoz Canada entered into a stipulation as to the infringement of claims 1 and 2 of the '214 Patent (D.I. 212); and

WHEREAS, the Parties have agreed to streamline and expedite resolution of the disputed issues and conserve the resources of the Court;

THEREFORE, IT IS STIPULATED AND AGREED, by and between the undersigned attorneys for Plaintiffs and Defendants, and it is hereby Ordered that:

1. Sandoz Inc. and Sandoz Canada stipulate that the filing of ANDA 91-465 infringes each of claims 3 and 4 of the '214 Patent under 35 U.S.C. § 271(e)(2), if such claim is valid and enforceable.

2. Sandoz Inc. and Sandoz Canada stipulate that the filing of ANDA 91-465 infringes each of claims 1-12 of the '867 Patent under 35 U.S.C. § 271(e)(2), if such claim is valid and enforceable.

3. Sandoz Inc. and Sandoz Canada stipulate that Sandoz Inc.'s importation into the United States, and/or manufacture, use, sale or offer for sale within the United States, of the ANDA 91-465 Product will induce the direct infringement of each of claims 3 and 4 of the '214 patent, and therefore Sandoz Inc. would infringe such claim under 35 U.S.C. § 271(b), if such claim is valid and enforceable.

4. Sandoz Inc. and Sandoz Canada stipulate that Sandoz Inc.'s importation into the United States, and/or manufacture, use, sale or offer for sale within the United States, of the

ANDA 91-465 Product will induce the direct infringement of each of claims 1-12 of the '867 patent, and therefore Sandoz Inc. would infringe such claim under 35 U.S.C. § 271(b), if such claim is valid and enforceable.

5. Sandoz Canada stipulates that its manufacturing of the ANDA 91-465 Product will induce the direct infringement of each of claims 3 and 4 of the '214 patent, and therefore Sandoz Canada would infringe such claim under 35 U.S.C. § 271(b), if such claim is valid and enforceable.

6. Sandoz Canada stipulates that its manufacturing of the ANDA 91-465 Product will induce the direct infringement of each of claims 1-12 of the '867 patent, and therefore Sandoz Canada would infringe such claim under 35 U.S.C. § 271(b), if such claim is valid and enforceable.

7. Plaintiffs will dismiss Sandoz International from this Action without prejudice, and will not move to add Sandoz International back to this Action, absent non-compliance by Sandoz International with respect to its obligations under this Stipulation and Order or any subsequent agreement between Plaintiffs and Sandoz International relating to this Action and/or the product of ANDA No. 91-465.

8. As a condition of that dismissal, Plaintiffs and Sandoz International agree to be bound by the outcome of the Action, including but not limited to any decisions, judgments, injunctions, or temporary restraining orders concerning U.S. Patent No. 4,910,214, U.S. Patent No. 6,716,867, and/or ANDA No. 91-465 as if Sandoz International remained a party to the Action. This Court may enforce any such determinations in the Action against Plaintiffs and Sandoz International, which hereby agree to submit to such enforcement proceedings as if Sandoz International remained a party to this Action.

9. Should plaintiffs obtain the right to seek additional discovery from any remaining defendant, Sandoz International will not object to any discovery request served on it on the grounds that Sandoz International is no longer a party to the Action or that it is not subject to personal jurisdiction in this Court, but reserves all other objections.

10. Plaintiffs, on one hand, and Sandoz International, on the other, withdraw their summary judgment motions with respect to Sandoz International, with each side to bear its own costs. Plaintiffs further withdraw their summary judgment motion with respect to infringement by Sandoz Inc. and Sandoz Canada.

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Dated: December 5, 2011

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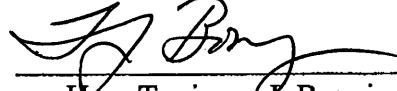
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Dated: December 5, 2011

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SO ORDERED:


Hon. Tonianne J. Bongiovanni
United States Magistrate Judge

12/5/11